



**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Part 212, 237, and 252**

**[Docket DARS-2023-0016]**

**RIN 0750-AL07**

**Defense Federal Acquisition Regulation Supplement: Transfer and Adoption of Military Animals (DFARS Case 2020-D021)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2020.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2020-D021, using any of the following methods:

- o *Federal eRulemaking Portal:* <https://www.regulations.gov>.

Search for "DFARS Case 2020-D021." Select "Comment" and follow the instructions to submit a comment. Please include "DFARS Case 2020-D021" on any attached documents.

- o *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2020-D021 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

**FOR FURTHER INFORMATION CONTACT:** Kimberly R. Ziegler, telephone 703-901-3176.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD is proposing to amend DFARS part 237, Service Contracting, to implement section 372(f) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Pub. L. 116-92). Section 372(f), as implemented at 10 U.S.C. 2387 (previously 10 U.S.C. 2410r), requires DoD contracting officers to include a clause in contracts when contract working dogs are provided under the contract. 10 U.S.C. 2387 requires the transfer of a contract working dog, after the service life of the dog has terminated, to the United States Air Force, 341<sup>st</sup> Training Squadron, for—

- a. Veterinary screening and care; and
- b. Reclassification as a military animal and placement for adoption in accordance with 10 U.S.C. 2583.

The service life of a contract working dog may be terminated if a contracting officer determines that—

- a. The final contractual obligation of the dog preceding the transfer is with DoD; and

b. The dog cannot be used by another department or agency of the Federal Government due to age, injury, or performance.

DoD determines the status of military animals and whether a military animal is suitable for transfer or adoption under the statutory direction provided in 10 U.S.C. 2583, Military animals: transfer and adoption. It also provides the priority for adoptions or transfer, standards for veterinary care, and transportation of retiring military working dogs. The 341<sup>st</sup> Training Squadron is responsible for the performance of these duties under the DoD Military Working Dog Program. Section 372 amends 10 U.S.C. 2583; however, those amendments are outside of the scope of this proposed rule.

## **II. Discussion and Analysis.**

The proposed rule creates a new subpart under DFARS part 237, Service Contracting, to address the requirements in 10 U.S.C. 2387. DoD generally contracts for contract working dogs as a service performed by a contracted handler and dog as a unit or team, most often for security, law enforcement, or other specialized circumstances. These contract working dogs are under the control of an experienced, contracted handler at all times and are not paired with an active duty military member or DoD civilian handler. Based upon the manner in which DoD contracts for the contract working dogs and the definition of a contract working dog provided in 10 U.S.C. 2387(c), the new direction is implemented in DFARS part 237.

A contract working dog would be transferred to the Government only when the conditions at 10 U.S.C. 2387(b) are met. In the event that a requiring activity submits a request based upon both conditions being met, a contracting officer may determine that the service life of a contract working dog has terminated. The dog will then be transferred to the 341<sup>st</sup> Training Squadron for reclassification as a military animal and placement for adoption in accordance with 10 U.S.C. 2583.

The proposed rule prescribes a new contract clause at 252.237-70XX, Transfer and Adoption of Military Animals, for use in solicitations and contracts for contract working dog services, to include solicitations and contracts using Federal Acquisition Regulation (FAR) part 12 procedures and for commercial products and commercial services. The new clause provides notification to offerors and contractors that under certain circumstances, the contract working dog is required to be transferred to the 341<sup>st</sup> Training Squadron for care and reclassification as a military animal and placement for adoption in accordance with 10 U.S.C. 2583.

### **III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Services and Commercial Products, Including Commercially Available Off-the-Shelf (COTS) Items**

This proposed rule implements 10 U.S.C. 2387 as amended by section 372(f) of the NDAA for FY 2020. The statute requires DoD to add a contract clause to contracts for the provision of

contract working dog services. As a result, the proposed rule adds one new contract clause at 252.237-70XX, Transfer and Adoption of Military Animals, for use in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for commercial products and commercial services, that require the services of a contract working dog.

Accordingly, DoD intends to apply the proposed rule to acquisitions below the SAT and to the acquisition of commercial services.

*A. Applicability to Contracts at or Below the Simplified Acquisition Threshold*

41 U.S.C 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the SAT. It is intended to limit the applicability of laws to such contracts or subcontracts. 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the Federal Acquisition Regulatory Council makes a determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. The Principal Director, Defense Pricing and Contracting (DPC), is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the Federal Acquisition Regulation system of regulations. DoD intends to make that determination to apply this proposed rule at or below the SAT.

*B. Applicability to Contracts for the Acquisition of Commercial Services and Commercial Products, Including COTS Items*

10 U.S.C. 3452 (previously 10 U.S.C. 2375) governs the applicability of laws to DoD contracts and subcontracts for the acquisition of commercial products, including COTS items, and commercial services from provisions of law enacted after October 13, 1994, and is intended to limit the applicability of laws to contracts and subcontracts for the acquisition of commercial services and commercial products including COTS items. 10 U.S.C. 3452 provides that if a provision of law contains criminal or civil penalties, or if the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)) makes a written determination that it is not in the best interest of the Federal Government to exempt commercial product and commercial service contracts, the provision of law will apply to contracts for the acquisition of commercial products and commercial services. Due to delegations of authority from USD(A&S), the Principal Director, DPC is the appropriate authority to make this determination. DoD intends to make that determination to apply this proposed rule to the acquisition of commercial services if otherwise applicable.

*C. Determination*

DoD is proposing to apply the requirements of 10 U.S.C. 2387 to contracts at or below the SAT, since the requirements of the proposed clause at 252.237-70XX would apply to contracts that

are normally of a value at or below the SAT and conducted under FAR part 12 procedures. The new requirements will apply to contracts for the acquisition of commercial services, because the services provided under these contracts are considered commercial in nature. The requirements do not apply to COTS items.

It is not in the best interest of the Federal Government to exempt application of this proposed rule to actions at or below the SAT or for commercial services. An exception for contracts below the SAT and those for commercial services would exclude the majority of the contracts intended to be covered by the law, thereby undermining the overarching public policy purpose of the law.

#### **IV. Expected Impact of the Rule**

DoD does not expect the proposed rule to have a significant impact on the public, because the need for a contracting officer to make a determination that a contract working dog has reached the end of its service life will be rare. Such acquisitions are few in number, and service contractors who provide contract working dogs and handlers are expected to replace dogs and handlers who are unable to perform to DoD standards. A contracting officer's representative would be responsible for monitoring contract performance and coordinating any replacement dog and handler requirements.

#### **V. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

## **VI. Regulatory Flexibility Act**

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed rule will apply to a limited number of service providers. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement 10 U.S.C. 2387 (previously 10 U.S.C. 2410r), as amended by section 372(f) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Pub. L. 116-92). Under 10 U.S.C. 2387, DoD



contracting officers are required to include a clause in contracts for contract working dog services.

The objective of the rule is to implement the statutory requirements for terminating the service life of a contract working dog, when certain circumstances apply, and transferring the animal to the Department of the Air Force, 341<sup>st</sup> Training Squadron. The legal basis of the rule is 10 U.S.C. 2387, as amended by section 372(f) of the NDAA for FY 2020.

This proposed rule will apply to small entities providing contract working dog and handler services to DoD. The proposed clause is prescribed for use in solicitations and contracts for such services, including those conducted under FAR part 12 procedures for the acquisition of commercial products and commercial services.

Research conducted in the Contract Opportunities section of SAM.gov indicates that contract working dog and handler services are generally procured under North American Industry Classification System codes and product and service codes that provide for certain physical security and law enforcement services. Data obtained from the Federal Procurement Data System (FPDS) for FY 2019, 2020, and 2021 indicate that DoD awards an average of 227 contract actions annually for these physical security and law enforcement services, which may include a requirement for a contract working dog and handler. Of the estimated 227 awards, an average of approximately 72 awards are made annually to an estimated 52 unique small

entities. Neither FPDS nor SAM.gov provide data for the number of awards that are specific to the contract working dog and handler services; however, this analysis assumes all of the estimated awards and unique small entities may be impacted.

The proposed rule does not impose any new reporting, recordkeeping, or compliance requirements.

The proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no practical alternatives that will accomplish the objectives of the statute.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (DFARS Case 2020-D021), in correspondence.

## **VII. Paperwork Reduction Act**

This proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

## **List of Subjects in 48 CFR Part 212, 237, and 252**

Government Procurement

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*Editor/Publisher, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 212, 237, and 252 are proposed to be amended as follows:

1. The authority citation for parts 212, 237, and 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

**PART 212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES**

2. Amend section 212.301 by adding paragraph (f)(xiv)(E) to read as follows:

**212.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.**

\* \* \* \* \*

(f) \* \* \*

(xiv) \* \* \*

(E) Use the clause at 252.237-70XX, Transfer and Adoption of Military Animals, as prescribed in 237.7X04 to comply with 10 U.S.C. 2387.

**PART 237—SERVICE CONTRACTING**

3. Add subpart 237.7X to read as follows:

**SUBPART 237.7X—TRANSFER AND ADOPTION OF MILITARY ANIMALS**

237.7X00 Scope of subpart.  
237.7X01 Definition.  
237.7X02 Policy.  
237.7X03 Procedures.  
237.7X04 Contract clause.

**SUBPART 237.7X—TRANSFER AND ADOPTION OF MILITARY ANIMALS**

**237.7X00 Scope of subpart.**

This subpart implements 10 U.S.C. 2387, which requires, under certain circumstances, the transfer of a contract working dog to the Department of Air Force, 341<sup>st</sup> Training Squadron, for veterinary screening and care in accordance with 10 U.S.C. 2583.

**237.7X01 Definition.**

As used in this subpart—

*Contract working dog* means a dog that—

- (1) Performs a service for DoD pursuant to a contract; and
- (2) Is trained and kenneled by an entity that provides such a dog pursuant to such a contract.

**237.7X02 Policy.**

(a) In accordance with 10 U.S.C. 2387, DoD will transfer a contract working dog to the Department of the Air Force, 341<sup>st</sup> Training Squadron, for veterinary screening and care after the service life of the dog has terminated.

(b) The service life of a contract working dog may be terminated if—

(1) The final contractual obligation of the dog preceding transfer is with DoD; and

(2) The dog cannot be used by another department or agency of the Federal Government due to age, injury, or performance.

(c) A contract working dog that has reached the end of its service life will be transferred for care and reclassification as a military animal and placement for adoption in accordance with 10 U.S.C 2583.

**237.7X03 Procedures.**

Contracting officers, at the request of the requiring activity, may issue a determination that the service life of a contract working dog has terminated if the conditions in 237.7X02(b) have been documented by the requiring activity.

**237.7X04 Contract clause.**

Use the clause at 252.237-70XX, Transfer and Adoption of Military Animals, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that require the use of a contract working dog.

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

4. Add section 252.237-70XX to read as follows:

**252.237-70XX Transfer and Adoption of Military Animals.**

As prescribed in 237.7X04, use the following clause:

TRANSFER AND ADOPTION OF MILITARY ANIMALS (DATE)

(a) *Definition.* As used in this clause—

*Contract working dog* means a dog that—

- (1) Performs a service for DoD pursuant to a contract; and
- (2) Is trained and kenneled by an entity that provides such a dog pursuant to such a contract.

(b) In accordance with 10 U.S.C. 2387, a contract working dog, after the service life of the dog has terminated, is required to be transferred to the Department of the Air Force, 341<sup>st</sup> Training Squadron, for veterinary screening and care and for reclassification as a military animal and placement for adoption in accordance with 10 U.S.C. 2583.

(c) The service life of a contract working dog may be terminated if the Contracting Officer determines that—

(1) The final contractual obligation of the dog preceding transfer is with DoD; and

(2) The dog cannot be used by another department or agency of the Federal Government due to age, injury, or performance.

(d) If the Contracting Officer determines that the service life of a contract working dog has terminated, the dog will be transferred to the 341<sup>st</sup> Training Squadron for care and reclassification as a military animal and placement for adoption in accordance with 10 U.S.C. 2583.

(End of clause)